U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 30, 2016

BY ECF AND EMAIL

The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan Federal Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: United States v. Gary Hirst,
15 Cr. 643 (PKC)

Dear Judge Castel:

The Government respectfully responds in opposition to defendant Gary Hirst's letter renewing his motion for a judgment of acquittal and, in the alternative, for a new trial pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure, respectively.

Under both Rule 29 and 33, the defendant faces a heavy burden. Pursuant to Rule 29, the Court "must uphold the judgment of conviction if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States* v. *Vilar*, 729 F.3d 62, 91 (2d Cir. 2013) (internal quotation marks, citation, and alteration omitted). Rule 33(a) permits the district court to "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33. For relief to be granted under Rule 33, however, "there must be a real concern that an innocent person may have been convicted." *United States* v. *Ferguson*, 246 F.3d 129, 134 (2d Cir. 2001) (quotation omitted); *see United States* v. *Canova*, 412 F.3d 331, 349 (2d Cir. 2005) ("'The ultimate test' is 'whether letting a guilty verdict stand would be a manifest injustice.'") (quoting *Ferguson*, 246 F.3d at 133).

Hirst's cursory submission fails to articulate a basis upon which his motions should be granted. First, as the Court previously determined when ruling on Hirst's Rule 29 motion at the close of the Government's case, (Tr. at 1361), the jury's verdict was supported by sufficient evidence establishing each of the elements of the crimes with which Hirst was charged. Specifically, the Government presented ample evidence from which a reasonable jury could conclude that Hirst, in agreement with others, knowingly and intentionally participated in a scheme to cause the issuance of Gerova shares for no legitimate business purpose; to hide the issuance from both shareholders and Gerova's officers and directors, for whom such information was material; and that he and others used the mails, wires, and instrumentalities of interstate commerce to do so. Further, with respect to the statute of limitations, Hirst and, in the case of the conspiracy counts, other co-conspirators, engaged in conduct on or after September 21, 2010,[1] including, *inter alia*, the matched trading of Gerova shares issued to Ymer Shahini, and the provision of materially misleading information to the New York Stock Exchange ("NYSE") by both the mails and email communications. *See e.g.*, GX 904 (detailing matched trading in Gerova shares); GX 587 (email with NYSE concerning January 28 2011 letter, signed by Gary Hirst (GX 589)).

Second, Hirst has not articulated any specific basis on which to challenge the Court's rulings on his motions in limine or the objections at trial, simply asserting without support that such rulings and "all of the prior proceedings herein" deprived him of a fair trial. Such vague and unsupported assertions fall far short of meeting his burden under Rule 33.

Accordingly, the Government respectfully requests that the Court deny Hirst's motions for a judgment of acquittal or new trial.

Respectfully submitted,

PREET BHARARA
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[1] The original Indictment in this matter was returned on September 21, 2015.